

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**





ORIGINAL  
WITH PROOF  
OF SERVICE

# 75-7474

To be argued by  
ARNOLD I. RICH

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## UNITED STATES COURT OF APPEALS

*for the*  
**SECOND CIRCUIT**

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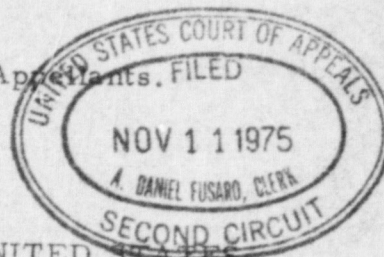
JANUARY MUSIC CORPORATION,  
ARCH MUSIC COMPANY, INC.,  
and SEALARK ENTERPRISES, INC.,

Plaintiffs-Appellees,

- against -

MUSICOR RECORD CORPORATION and  
TALMADGE PRODUCTION CO., INC.,

Defendants-Appellants.



ON APPEAL FROM AN ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

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APPELLEES' BRIEF

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### PRELIMINARY STATEMENT

This is an action for copyright infringement commenced by three music publishing companies -- January Music Corporation, Arch Music Co., Inc. and Sealark Enterprises, Inc. Between October, 1964 and June 2, 1965 the appellees issued 182 licenses to appellant Musicor Record Corporation (hereafter "Musicor") permitting Musicor to use appellees' copyrighted musical compositions.

The licenses were all issued by The Harry Fox Agency, as Agent and Trustee for the appellees. The licenses state that Musicor advised that it wishes to use the copyrighted works which are the subject of each license "under the compulsory license provision of Section 1 (e) of the Copyright Act upon the parts of instruments serving to reproduce mechanically the copyrighted work ", and they further provide:

"Upon your doing so, you shall have all the rights which are granted to, and all of the obligations which are imposed upon, users of said copyrighted work under the compulsory license provision of the Copyright Act, after use or permission or knowing acquiescence by the said Publisher, in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the copyrighted work (viz: phonograph records) by another person, except that with respect to records thereof manufactured by you:



## STATEMENT

copyright infringement commenced  
s -- January Music Corporation,  
Enterprises, Inc. Between October,  
issued 182 licenses to appellant  
ter "Musicor") permitting Musicor  
al compositions.  
sued by The Harry Fox Agency,  
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y license provision of Section 1 (e)  
f instruments serving to reproduce  
, and they further provide:

g so, you shall have all the rights  
ed to, and all of the obligations  
ed upon, users of said copyrighted  
compulsory license provision of  
ct, after use or permission or  
cense by the said Publisher,  
copyrighted work upon the parts  
serving to reproduce mechanically  
work (viz: phonograph records) by  
except that with respect to records  
tured by you:

1. You shall pay royalties  
as Agent and Trustee  
Publisher quarterly  
factured\*; and

2. For such records  
shall be the statutory

3. This license covers  
lar recording of the  
above as performed  
set forth above; and  
nor in any way affect  
respecting recording

4. In the event you fail  
royalties as herein provided  
have the right to republish  
giving you written notice

5. You need not serve  
by the Copyright Act.

6. This license is limited  
territories and possessions

Commencing in October, 1964  
phonograph records containing the compositions

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\* 174 of the 182 licenses issued by appellant  
royalties would be due on all records manufactured  
whether they were sold. The remaining 8  
payment of royalties on records manufactured

\*\* Approximately 168 of the 182 licenses issued  
the 2¢ statutory rate. The remaining licenses  
at varying rates between 1¢ and 1 3/4¢.

\*\*\* Between 1960 and October, 1964 licensee  
Records, a record company which manufactures  
product. These licenses will be hereafter

1. You shall pay royalties and account to me as as Agent and Trustee for and on behalf of said Publisher quarterly on the basis of records manufactured\*; and
2. For such records manufactured, the royalty shall be the statutory rate\*\*; and
3. This license covers and is limited to one particular recording of the musical composition set forth above as performed by the artist on the record number set forth above; and this license does not supersede nor in any way affect any prior licenses now in effect respecting recordings of said musical composition; and
4. In the event you fail to account to me and pay royalties as herein provided for, my principal shall have the right to repudiate and revoke this license by giving you written notice to such effect; and
5. You need not serve or file the notices required by the Copyright Act.
6. This license is limited to the United States, its territories and possessions."

Commencing in October, 1964 Musicor manufactured and sold phonograph records containing the compositions licensed from appellees. \*\*\*

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\* 174 of the 182 licenses issued by appellees to Musicor provide that royalties would be due on all records manufactured, regardless of whether they were sold. The remaining 8 licenses provided for the payment of royalties on records manufactured and sold.

\*\* Approximately 168 of the 182 licenses issued provide for royalties at the 2¢ statutory rate. The remaining licenses provide for royalties at varying rates between 1¢ and 1 3/4¢.

\*\*\* Between 1960 and October, 1964 licenses were issued to United Artists Records, a record company which manufactured and distributed the Musicor product. These licenses will be hereafter discussed in Point II.



In early 1965 appellees felt they were not being accounted to properly (R. 529a), and they requested their accountant, William Lazerow, to conduct an audit of Musicor's books (R. 559a). On August 9, 1965, after the audit revealed that Musicor was not accounting properly, appellees gave Musicor notice cancelling and terminating the license agreements and instituted this suit (R. 529a; 559a-561a). It should be noted that pursuant to the express terms of the licenses, Pls' Exs. 1, 2, 3, 4 (para. 4), appellees had the "right to repudiate and revoke" the licenses in the event Musicor failed to account and pay royalties as provided in the license. Upon such revocation Musicor remained subject to the compulsory license provisions of Section 1 (e), but without the variations thereto contained in the licenses as set forth above. However, despite the cancellation Musicor improperly continued to manufacture and sell phonograph records embodying the compositions without authorization, permission or consent. (R. 708a-4, paras. (f) and (g), and appellees instituted this action for copyright infringement.

#### POINT I

#### THIS COURT HAS JURISDICTION

It is clear from the cases and authorities that this Court

properly has jurisdiction. In 2 Nimmer on Copyright, Sec. 131.11 Jurisdiction and Venue, p. 572-572.1 (1974) the treatise states the following:

"There are, moreover, certain cases involving the application of other provisions of the Copyright Act in which the federal courts have exercised their copyright jurisdiction notwithstanding the absence of an infringement. One example is an action for failure to pay royalties under the compulsory license provisions of Sec. 1 (e). Even if the parties execute a consensual license departing in minor degree from the requirements of Sec 1 (e) such as varying the accounting period and dispensing with notice requirements, they will nevertheless be presumed to intend their relationship to be governed by the provisions of Sec. 1 (e) so as to permit the federal courts to retain jurisdiction in an action for breach of the licensing provisions."

The licenses issued to appellants permitted Musicor to use the compositions under the compulsory license provisions of Section 1 (e) of the Copyright Act. These licenses closely parallel the terms of Section 1 (e), except they slightly varied its requirements by changing the accounting period and dispensing with the notice of use requirement. Two of the cases cited by Nimmer are Joy Music, Inc. v. Seeco Records, Inc., 166 F. Supp. 549 (S.D. N.Y. 1958) and Shapiro, Bernstein & Co. v. Gabor, 266 F. Supp. 613 (S.D. N.Y. 1966).



In Seeco, the Court held that if the parties intend their relationship to be governed by the compulsory license provisions of Section 1 (e) of the Copyright Act, the license agreement will be enforceable in the federal courts, even though the parties vary from the terms of Section 1 (e) by changing the accounting period, lowering the royalty rate and dispensing with notice requirements.

The licenses in the instant case specifically provide that Musicor wishes to use the copyright works "under the compulsory license provisions of Section 1 (e) of the Copyright Act", and they further provide that upon using the copyrighted works upon the parts of instruments serving to mechanically reproduce the works, Musicor shall be subject to all of the rights and obligations of the compulsory license provisions of Section 1 (e), except as set forth in the license. It is apparent the parties intended (as they provided in the license agreement) that their relationship be governed by the compulsory license provisions of Section 1 (e), and this Court has jurisdiction.

In Shapiro, Bernstein & Co. v. Gabor, supra, the Court construed virtually the same license which is the subject of this action. In denying a motion to dismiss the complaint the Court said the following which is applicable here:

"The documents in question describe themselves as agreements and licenses and contain variations from the compulsory license provisions of the Copyright Act in such matters as (1) amounts of royalties; (2) payment on the basis of records manufactured and sold, instead of just on records manufactured; (3) time and manner of payment; (4) dispensing with notice requirements; and (5) the licensed territory. Nonetheless, with insubstantial variations, the documents upon which defendant relies recite expressly that defendant wished "to use said copyrighted work under the compulsory license provision of Section 1 (e) of the Copyright Act upon the parts of instruments served to reproduce mechanically the copyrighted work," and further that defendant should "have all the rights which are granted to, and all the obligations which are imposed upon, users of said copyrighted work under the compulsory license provision of the Copyright Act..."

An agreement substantially identical with these was construed by Judge Weinfeld in *Joy Music, Inc. v. Seeco Records, Inc.*, 166 F. Supp. 549 (S.D. N.Y. 1958), and by Judge McLean in *Gershwin Publishing Co. v. Charlie Parker Record Corp.*, Civil No. 63-768, S.D. N.Y., February 11, 1964, a case in which the defendant made the same argument as that made here. Both my brothers held that the relatively minor variations from the provisions of the Copyright Act were not sufficient to make the agreement a private licensing agreement. We agree with that construction, for it seems plain on the face of the documents that the parties intended that their relationship should be governed by the compulsory license provisions of the Copyright Act, and not by a private licensing agreement.

The nonpayment of the statutory royalty by Continental is conceded. Section 101 (e) of the Copyright Act, "in treating 'unauthorized manufacture'



In Cresci v. Music Publishers Holding Corporation, 210 F. Supp. 253 (S. D. N. Y. 1962) federal jurisdiction was not sustained because the suit was essentially one for fraud and violations against public policy, and in Golden West Melodies, Inc. v. Capitol Records, Inc., 274 Cal. App. 2d 713 (1969) 79 Cal. Rptr 442, a state action, that Court merely held that in California, state courts have jurisdiction over actions to recover royalties.

Appellants also cited Ingber v. ABC Records, Inc., civil No. 74-3716 (USDC, Central Dist. of Cal.) This case was not reported, and further, no opinion was rendered by that court.

It is clear that a federal court will exercise copyright jurisdiction, despite the absence of an infringement, if the parties intend their relationship to be governed by the compulsory license provisions of Section 1 (e) of the Copyright Act, and the action is one for failure to pay royalties under the compulsory license provisions, or for a breach of those provisions. 2 Nimmer on Copyright, supra; Joy Music, Inc. v. Seeco Records, Inc., supra; Shapiro, Bernstein & Co. v. Gabor, supra. The Court will also exercise jurisdiction if the action is for copyright infringement or for failure to pay statutory royalties for record reproduction. Here, the parties

expressly agreed to be bound by Section 1 (e), and this action is one for copyright infringement; for failure to pay royalties and statutory royalties under the compulsory license provisions of Section 1 (e).

The lower Court was unquestionably correct in holding that "this Court has jurisdiction to try the claims." (R. 851a)



## POINT II

### THE TERMS OF THE LICENSES ISSUED TO MUSICOR ARE CONTROLLING

The compulsory license statute, Section 1(e) of the Copyright Act, specifically provides for royalties to be paid on the basis of records manufactured. Licensors, in their discretion, may vary from the statute by providing for the payment of royalties on the basis of records manufactured and sold. However, the appellees chose not to vary from Section 1(e) in this respect, and they issued licenses on the basis of records manufactured. Mrs. Abby Schroeder\* and Mr. Al Berman, Managing Director of The Harry Fox Agency,\*\* testified that Mrs. Schroeder instructed Mr. Berman to issue licenses to Musicor on the basis of records manufactured. (R. 511a-512a; 328a; 282a) As a result of these instructions The Harry Fox Agency issued, on behalf of the appellees, 174 of the 182 licenses which are the subject

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\*Mrs. Schroeder, a Vice President of appellees was the person in charge of negotiating and issuing licenses on behalf of appellees. (R. 508a-509a)

\*\* The Harry Fox Agency represents approximately 3,500 music publishers -- about 65-70 per cent of all music publishers in the United States.

of this action on that basis. The remaining 8 licenses were inadvertently issued on the basis of records sold because of a clerical error. (R. 328a)

Mr. Berman testified (his testimony was not properly quoted by appellants in their brief) that although licenses are normally issued on the basis of records manufactured and sold, it depends on the instructions from the publisher. (R. 303a) He also said that there is no practice in the record and publishing industries entitling a record company to pay on the basis of records sold, if the license provides for the payment of a royalty on the basis of records manufactured. (R. 307a) Mr. Krasilovsky, appellants' witness, referred to another prominent publisher which also issues their licenses solely on the basis of royalties payable on records manufactured, and not on the basis of records sold. (R. 581a) It is obvious, as Judge Griesa held, that parties, as here, can vary from industry practice by agreeing to comply with Section 1(e) of the Copyright Act, and provide for the payment of royalties based on records manufactured. (R. 865a)

Musicor claims, on Page 15 of its brief, that the licenses issued to it by the appellees were never executed by Art Talmadge, whose name appears on most of the licenses, or by anyone else at Musicor. This claim, made for the first time at the trial, was



intended to give the false impression that Musicor did not sign the licenses because it believed that licenses previously issued by the appellees to United Artists were controlling. Those licenses provided for royalties payable on records sold, and also provided for a royalty at a generally lower rate than the ones issued by appellees to Musicor.

Judge Griesa properly rejected Musicor's claim by holding, after a thorough review of the testimony and evidence (R. 854a-862a) "that the licenses issued to Musicor are valid and binding instruments." (R. 862a)

The facts concerning the United Artists and Musicor licenses are as follows:

Commencing in 1960 Art Talmadge and Aaron Schroeder (President of appellants) each owned 50% of Musicor. In June, 1964 Mr. Schroeder sold his interest to Mr. Talmadge. (R. 342a; 349a) Musicor's records were manufactured and distributed by another record company, United Artists Records until October, 1964, when Musicor began to manufacture and sell its own records. During the time that United Artists distributed Musicor's records, appellees issued licenses to United Artists (R. 548a; 550a), and United Artists was obligated to account to appellees pursuant to the terms of those licenses. (R. 751a-768a)

When Mrs. Schroeder learned that Musicor began to manufacture and distribute its own records she instructed Mr. Berman to issue licenses for these records to Musicor on the basis of records manufactured, and on the basis of one separate license for each record number and use by Musicor, and not by composition\*. (R. 511a-512a)

In 1964, prior to the issuance of these licenses to Musicor, Mr. Talmadge requested a lower rate on certain songs. Mrs. Schroeder complied with this request, and the licenses for those songs were issued at the lower rate. (R. 512a-513a)

After Mrs. Schroeder's instructions to Mr. Berman, The Harry Fox Agency sent the licenses dated in December, 1964 to Musicor (R. 514a; 284a), \*\* which had them signed and returned to The Harry Fox Agency. (R. 284a-285a) Although Mr. Talmadge claimed that he did not sign the licenses where his purported signature appears, it is usual in the publishing industry for employees

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\* By way of example, if Musicor manufactured two separate records containing the same recording of the same song, two separate licenses would be issued.

\*\* Mrs. Schroeder testified that some licenses were issued to Musicor in October and November, 1964, probably because of isolated requests by Musicor in those months or because The Harry Fox Agency issued licenses after learning of Musicor's release of certain records. (R. 518a) The licenses issued in December, 1964 were made retroactive to October, 1964, the time when Musicor began to manufacture and sell its own records. (R. 514a)



of a record company to be designated to sign the name of another person on a mechanical license. (R. 520a; 284a) Indeed, some of licenses were signed with the names of employees of Musicor. (R. 519a). After The Harry Fox Agency sent the licenses to Musicor in December, 1964 Mr. Talmadge called Mrs. Schroeder. He told her that he received the licenses, and he wanted to know what they were for. Mrs. Schroeder said that the licenses issued to United Artists were only valid while that company was manufacturing distributing and paying royalties to the appellees. However, once Musicor manufactured and distributed its records new licenses must be issued to it. When Mr. Talmadge asked about the date appearing on the licenses, Mrs. Schroeder explained that it is the usual practice of The Harry Fox Agency to date licenses back retroactively to either the release of a record or to the effective date the records are manufactured and distributed. Mrs. Schroeder also pointed out that the licenses were issued for each use and not by musical composition. Mr. Talmadge responded, in substance, that he understood. (R. 515a-516a)

When The Harry Fox Agency received the signed copies of the licenses back from Musicor, it sent one copy to the appellees. (R. 286a; 515a)

Mrs. Schroeder and Mr. Berman both testified that prior to trial they were never advised by Musicor that the licenses were not executed by Musicor; that the licenses should not have been issued because of the licenses issued to United Artists; or that the licenses were incorrect in any way. (R. 304a-305a; 527a-528a)

The lower Court, "After weighing the evidence" correctly found "that the new licenses issued to Musicor were acquiesced in by Mr. Talmadge and were validly executed on behalf of Musicor. (R. 859a)

It is abundantly clear that the Musicor licenses, and not the United Artists, are determinative, and that Musicor was well aware of this fact. As Judge Griesa pointed out:

"Moreover, it was not until the first day of the trial of this action that defendant challenged the valid execution of the new licenses issued to Musicor. During the pre-trial proceedings defendants had advanced various other arguments about the licenses, but prior to the trial they had not challenged their validity. Indeed, in the pre-trial order of August 9, 1972, consented to by defendants' then attorneys, Beldock & Kushnick, there is a stipulation that plaintiffs and Musicor had entered into the licenses in question. In a pre-trial memorandum of August 17, 1972, Beldock & Kushnick made the same admission. Subsequently there was a change of attorneys for defendant Musicor, and Saxe, Bacon, Bolan & Manley were substituted for Beldock & Kushnick. In the fall of 1974 Musicor's new attorneys filed a statement of facts and again referred to the new Musicor licenses, without making any challenge as to their valid execution.



Defendants and their attorneys assert that it was only during the weekend prior to the trial of this action that they analyzed the documents to the extent necessary to uncover that the licenses to Musicor had never been validly signed.

I recognize that it is possible for attorneys to uncover new information during final trial preparation which makes it necessary to depart from positions previously taken. However, the admissions made by defendants' attorneys, as described above, are factors which I take into account, among others, in holding that the licenses issued to Musicor are valid and binding instruments." (R. 861a-862a)

If Musicor believed that the licenses issued to United Artists were controlling, then certainly Musicor would not have signed and returned the licenses issued on behalf of the appellees. Moreover, Mr. Talmadge's claim that "appellees were unable to prove that Talmadge or anyone else at Musicor had signed these licenses" flies in the face of the credible evidence.

In further refutation of Talmadge's version that Musicor did not sign the licenses, Judge Griesa noted that Talmadge's testimony related only to the licenses dated December, 1964, whereas "there were licenses bearing not only Talmadge's name, but the names of three other persons at Musicor, executed in October and November, 1964, and also in February and June, 1965."

Musicor's claim that the United Artists licenses are controlling was also not raised until about six years after this action was commenced.

The reason the appellants seek to come under the United Artists licenses is simply because they were issued on the basis of records manufactured and sold, and also because the royalty rate is generally lower than the rate provided in the Musicor licenses.

The licenses issued to United Artists provide that they are to enure to the benefit of United Artists and "its successors and assigns". Musicor's contention that it is the successor and assignee of United Artists with regard to these licenses was rejected by Judge Griesa, as follows:

"Defendants argue that Musicor was the successor and assignee of United Artists Records as to these licenses.

I find to the contrary. The only document which even arguably can be construed as making Musicor the successor or assignee of the rights of United Artists Records is the agreement between United Artists Records and Musicor of October 7, 1964. This is the agreement which provided for the wind-up of United Artists' distribution of records under the Musicor label. However, upon analysis, it is clear that this agreement did not provide for the assignment of United Artists' license rights, or the assignment of United Artists' royalty obligations, to



Musicor, except in a limited respect which does not cover the problems we are concerned with. Paragraph (6) of the October 1964 agreement provided that Musicor would be responsible for royalties in respect of United States sales of Musicor records by United Artists or its distributors or licensees. . But this provision does not cover the question of license rights or royalties with respect to records distributed by Musicor." (R. 863a-864a)

It is clear, even according to Musicor's own witness, William Krasilovsky, that the "wind-up" agreement between United Artists and Musicor (Ex. Y) does not constitute an assignment.

(R. 591a-592a) It is also apparent that the reason Musicor signed the licenses issued to it on behalf of the appellees is because it knew that it could not operate under the United Artists licenses.

The appellants also contend that Musicor was entitled to operate under the United Artists licenses because the licenses issued to Musicor provide that "...this license does not supersede nor in any way affect any prior licenses now in effect respecting recordings of said musical composition..."

Judge Griesa properly rejected this contention, as follows:

"Defendants contend that the United Artists licenses were "prior licenses now in effect respecting recordings of said musical compositions". Defen-

dants contend that, by virtue of this language, the new Musicor licenses could not operate to change the terms contained in the United Artists licenses.

I find to the contrary. Although the provision referred to has some possible ambiguity, the most sensible meaning to attach to it is that it relates to a situation where a series of licenses is issued by the licensor to the same licensee covering a number of different recordings of the same composition. The provision in question would mean that each of the licenses would exist independently without affecting the other licenses.

On the other hand, the interpretation of the provision suggested by defendants would mean that the new licenses entered into between plaintiffs and Musicor, following the termination of the distribution arrangement involving United Artists, would be essentially abrogated. In my view, there is no sound basis for such an interpretation. " (R. 864a-865a)

Appellants also claim that the appellees agreed to only charge royalties at the rate of 1-1/2¢ on all pre-May 8, 1964 recordings used in albums. The testimony clearly showed this claim to be without merit, and it was rejected by Judge Griesa, who said:

"Abby Schroeder testified that she had various conversations in the course of the negotiations in the spring of 1964, but that no agreement about a 1-1/2¢ rate was reached of the kind testified to by Talmadge or referred to in the Moelis letter. Mrs. Schroeder testified that subsequent to June 1964 there were specific requests by Talmadge for 1-1/2¢ rates on specific compositions, and that if she agreed, the individual license made specific provision for the 1-1/2¢ rate.



I accept Mrs. Schroeder's version of these events. It would be difficult to find an agreement based on the Talmadge testimony and the Moelis letter. Talmadge testified that the agreement related to all records originally issued through United Artists prior to May 8, 1964, and that this agreement was confirmed with Aaron Schroeder by Moelis. But the Moelis letter refers to "pre-1964 recordings". There is a difference of significance between "pre-1964" and "prior to May 8, 1964". It is probable that the Talmadge testimony and the Moelis letter refer to points discussed in negotiations, rather than to any actual agreement. " (R. 874a-875a)

There is yet another thing to support Judge Griesa's conclusion. The conversation referred to in Mr. Moelis' letter of June 8, 1964, was prior to the date on which agreements were signed pertaining to the acquisition by Mr. Talmadge of Mr. Schroeder's stock in Musicor, and the simultaneous execution of a production agreement (Ex. 20, R. 709a) between Musicor and Mr. Schroeder, which was part of the consideration for the sale of the stock. (R. 372a) Reference was made in Paragraph 14 of the production agreement (R. 716a) to a special rate on mechanical royalties due from Musicor to the appellees on new songs produced by Mr. Schroeder for Musicor. If there was an agreement as to a rate for the reissue of old recordings, it, too, would logically have been included in the production agreement. The fact that it was not, is a clear indication, as testified to by Mrs. Schroeder, that there was no agreement concerning those recordings. (R. 568a) Based on all of the testimony and

evidence Judge Griesa correctly held that the Moelis letter referred to points discussed in negotiations.

Finally, appellants claim that an alleged settlement was entered into between The Harry Fox Agency on behalf of the appellees and Musicor. However, there was an abundance of testimony and documentary evidence clearly showing that there was no such settlement. (R. 866a-869a)

#### CONCLUSION

The lower Court correctly held that it had jurisdiction, and it correctly awarded damages against the appellants. The judgment should be affirmed.

Respectfully submitted,

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New York, New York 10019  
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Arnold I. Rich  
of Counsel



STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss.:

JORGE GONZALEZ, being duly sworn,  
deposes and says that deponent is not a party to the action,  
is over 18 years of age and resides at 233 WEST 15<sup>th</sup> ST.  
NEW YORK, N.Y.

That on the 11<sup>th</sup> day of NOVEMBER, 1975,  
deponent personally served the within APPELLEE'S BRIEF  
upon the attorneys designated below who represent the  
indicated parties in this action and at the addresses below  
stated which are those that have been designated by said  
attorneys for that purpose.

By leaving 2 true copies of same with a duly  
authorized person at their designated office.

By depositing        true copies of same enclosed  
in a postpaid properly addressed wrapper, in the post office  
or official depository under the exclusive care and custody  
of the United States post office department within the State  
of New York.

Names of attorneys served, together with the names  
of the clients represented and the attorneys' designated  
addresses.

SAXE, BACON + BOLAN, P.C.  
ATTORNEYS FOR DEFENDANTS-APPELLANTS  
39 EAST 68<sup>th</sup> ST.  
NEW YORK, N.Y. 10021

Sworn to before me this

11<sup>th</sup> day of November, 1975

Michael DeSantis

MICHAEL DeSANTIS  
Notary Public, State of New York  
No. 03-0930908  
Qualified in Bronx County  
Commission Expires March 30, 1977